



This document is scheduled to be published in the Federal Register on 11/03/2011 and available online at <http://federalregister.gov/a/2011-28571>.

BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A-570-924]

Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China:
Preliminary Results of the 2009-2010 Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: In response to requests from interested parties, the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip ("PET film") from the People's Republic of China ("PRC"). The period of review ("POR") is November 1, 2009, through October 31, 2010.

We have preliminarily determined that sales have been made below normal value ("NV") by certain companies subject to this review. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the POR for which the importer-specific assessment rates are above de minimis.

We invite interested parties to comment on these preliminary results. Parties who submit comments are requested to submit with each argument a summary of the argument. We intend to issue the final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act").

EFFECTIVE DATE: [insert date of publication in the Federal Register]

FOR FURTHER INFORMATION CONTACT: Thomas Martin or Jonathan Hill, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S.

Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3936 and (202) 482-3518 respectively.

SUPPLEMENTARY INFORMATION

Background

On November 10, 2008, the Department published in the Federal Register an antidumping duty order on PET film from the PRC.¹ On November 1, 2010, the Department published in the Federal Register a notice of opportunity to request an administrative review of the antidumping duty order on PET film from the PRC for the period November 1, 2009, through October 31, 2010.² On November 29, 2010, the Department received timely requests in accordance with 19 CFR 351.213(b)(2) for an administrative review from Fuwei Films (Shandong) Co., Ltd. (“Fuwei Films”), Shaoxing Xiangyu Green Packing Co., Ltd. (“Green Packing”), and Tianjin Wanhua Co., Ltd. (“Wanhua”). On November 30, 2010, the Department also received a timely request from DuPont Teijin Films, Mitsubishi Polyester Film, Inc., SKC, Inc., and Toray Plastics (America), Inc. (collectively, “Petitioners”), in accordance with 19 CFR 351.213(b)(1), for an administrative review of the antidumping duty order on PET film from the PRC for six companies: Fuwei Films, Green Packing, Wanhua, Sichuan Dongfang Insulating Material Co., Ltd. (“Dongfang”), Shanghai Xishu Electric Material Co., Ltd. (“Xishu”), and Shanghai Uchem Co., Ltd. (“Uchem”). On December 28, 2010, the Department published a notice of initiation of an antidumping duty administrative review on PET film from the PRC, in

¹ See Notice of Antidumping Duty Orders: Polyethylene Terephthalate Film, Sheet, and Strip From Brazil, the People's Republic of China and the United Arab Emirates: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value for the United Arab Emirates, 73 FR 66595 (November 10, 2008) (“Orders”).

² See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review, 75 FR 67079 (November 1, 2010).

which it initiated a review of Fuwei Films, Green Packing, Wanhua, Dongfang, Xishu, and Uchem.³

On December 30, 2010, the Department placed on the record CBP import data for the Harmonized Tariff Schedule of the United States (“HTSUS”) subheading 3920.62.0090. On January 20, 2011, the Department exercised its authority to limit the number of respondents selected for individual examination pursuant to section 777A(c)(2)(B) of the Act.⁴ The Department selected the two largest exporters by volume as our mandatory respondents for this review, Dongfang and Wanhua.⁵

On January 20, 2011, the Department issued the antidumping questionnaire to Dongfang and Wanhua. On February 28, 2011, the Department received separate rate certifications from Fuwei Films, Green Packing, and Wanhua.⁶ Between March 3, 2011 and June 20, 2011, Dongfang and Wanhua responded to the Department’s questionnaire and supplemental questionnaires. In addition, during March 2011, the Department received voluntary questionnaire responses from Fuwei Films and Green Packing. Between March and July 2011 Petitioners provided comments on the mandatory respondents’ questionnaire responses.

In response to the Department’s April 8, 2011, letter providing parties with an opportunity to submit comments regarding surrogate country and surrogate value (“SV”)

³ See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 75 FR 81565 (December 28, 2010) (“Initiation Notice”).

⁴ See Memorandum to Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, from Thomas Martin, International Trade Compliance Analyst, AD/CVD Operations, Office 4, “Respondent Selection in the Second Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China,” dated January 20, 2011 (“Respondent Selection Memo”).

⁵ Dongfang and Wanhua are collectively referred to as the “mandatory respondents.”

⁶ Fuwei Film and Green Packing are collectively referred to as “separate rate applicants.”

selection,⁷ Petitioners, the mandatory respondents, and the separate rate applicants filed surrogate country and SV comments on April 22, 2011 and May 6, 2011, respectively.⁸ Petitioners, the mandatory respondents, and the separate rate applicants filed rebuttal surrogate country comments on April 29, 2011.

On July 18, 2011, the Department extended the time period for completion of the preliminary results of this review by 60 days until October 3, 2011.⁹ On October 3, 2011, the Department extended the time period for completion of the preliminary results of this review by a further 30 days until October 31, 2011.¹⁰

Period of Review

The POR is November 1, 2009 through October 31, 2010.

Scope of Order

The products covered by the order are all gauges of raw, pre-treated, or primed PET film, whether extruded or co-extruded. Excluded are metalized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches thick. Also excluded is roller transport cleaning film which has at least one of its surfaces modified by application of 0.5 micrometers of SBR latex. Tracing and drafting film is also excluded. PET film is classifiable under subheading 3920.62.00.90 of the HTSUS. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is

⁷ See Letter from Robert Bolling, Program Manager, Office 4, to All Interested Parties, “Antidumping Duty Administrative Review of PET film from the People’s Republic of China (PRC),” dated April 8, 2011.

⁸ Bemis Company Inc., an industrial consumer of the subject merchandise, also submitted SV comments.

⁹ See Polyethylene Terephthalate Film, Sheet, and Strip From the People’s Republic of China: Extension of Preliminary Results of Antidumping Duty Administrative Review, 76 FR 42113 (July 18, 2011).

¹⁰ See Polyethylene Terephthalate Film, Sheet, and Strip From the People’s Republic of China: Extension of Preliminary Results of Antidumping Duty Administrative Review, 76 FR 61085 (October 3, 2011).

dispositive.

Verification

Pursuant to Section 782(i) of the Act and 19 CFR 351.307(b)(iv), between July 27, 2011 and August 4, 2011, the Department conducted verification of Dongfang's and Wanhua's U.S. sales and factors of production ("FOP") submissions.¹¹

Non-Market Economy Country Status

The Department has treated the PRC as a non-market economy ("NME") country in all past antidumping duty investigations and administrative reviews and continues to do so in this case.¹² The Department has previously examined the PRC's market-economy status and determined that NME status should continue for the PRC.¹³ In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority.¹⁴ No interested party to this proceeding has contested such treatment. Accordingly, we calculated NV using a FOP methodology in accordance with section 773(c) of the Act, which applies to NME countries.

¹¹ See Memorandum from Thomas Martin, Jonathan Hill and Whitney Rolig to the File, "Verification of the Sales and Factors Response of Sichuan Dongfang Insulating Material Co., Ltd., in the Second Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China," dated September 12, 2011 ("Dongfang Report"); see also Memorandum from Thomas Martin, Jonathan Hill and Whitney Rolig to the File, "Verification of the Sales and Factors Response of Tianjin Wanhua Co., Ltd. in the Antidumping Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China," dated September 12, 2011 ("Wanhua Report").

¹² See section 771(18)(C) of the Act; see, e.g., Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review, 76 FR 9753 (February 22, 2011)

¹³ See Memorandum from the Office of Policy to David M. Spooner, Assistant Secretary for Import Administration, The People's Republic of China (PRC) Status as a Non-Market Economy (NME), dated May 15, 2006. This document is available online at <http://ia.ita.doc.gov/download/prc-nme-status/prc-nme-status-memo.pdf>.

¹⁴ See section 771(18)(C)(i) of the Act.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV on the NME producer's FOPs. The Act further instructs that valuation of the FOPs shall be based on the best available information from a surrogate market-economy country or countries considered to be appropriate by the Department.¹⁵ When valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market-economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.¹⁶ Further, the Department normally values all FOPs in a single surrogate country.¹⁷ The sources of SVs are discussed under the "Normal Value" section below and in the Surrogate Value Memorandum, which is on file in the Central Records Unit, Room 7046 of the main Department building.¹⁸

In examining which country to select as its primary surrogate country for this proceeding, the Department first determined that India, Indonesia, Peru, the Philippines, Thailand, and Ukraine are countries comparable to the PRC in terms of economic development.¹⁹ On April 22, 2011, Petitioners proposed selecting Thailand as the surrogate country because: (1) the PRC and Thailand share comparable levels of economic development, as evidenced by the fact that Thailand's per capita gross national income is the closest to the PRC among the countries

¹⁵ See section 773(c)(1) of the Act.

¹⁶ See section 773(c)(4) of the Act.

¹⁷ See 19 CFR 351.408(c)(2).

¹⁸ See Memorandum to the File through Robert Bolling, Program Manager, AD/CVD Operations, Office 4, from Thomas Martin, International Trade Compliance Analyst, "Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Surrogate Value Memorandum," dated October 27, 2011 ("Surrogate Value Memorandum").

¹⁹ See Memorandum from Carole Showers, Director, Office of Policy, to Robert Bolling, Program Manager, Office 4, "Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China" (April 7, 2011) ("Policy Memorandum").

included in the Policy Memorandum listing potential surrogate countries; and (2) Thailand is a significant producer of merchandise identical to subject merchandise, PET film.²⁰ On April 29, 2011, the mandatory respondents filed rebuttal comments arguing that the Department should select India as the surrogate country.²¹

The Department finds that both Thailand and India are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise.²² Thus, the Department bases its selection of a surrogate country on the availability of contemporaneous Indian and Thai data for valuing FOP.

With respect to data considerations, in selecting a surrogate country, Policy Bulletin 04.1 describes the Department's practice. Specifically, ". . . if more than one country has survived the selection process to this point, the country with the best factors data is selected as the primary surrogate country."²³ Currently, the record contains SV information, including possible surrogate financial statements, from Thailand and India. The record of this proceeding contains one Thailand company financial statement submitted by Petitioners, that of Polyplex Public Company Ltd. ("Polyplex (Thailand)"). However, the Department has determined that the financial statement of Polyplex (Thailand) does not permit the Department to calculate accurate surrogate financial ratios, as it does not contain information upon which to apply a reasonable methodology to apportion raw material expenses and consumable expenses to calculate the

²⁰ See Letter from Petitioners to Secretary of Commerce, "Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People's Republic of China; Choice of Surrogate Country," (April 22, 2011).

²¹ See Letter from Respondents to Secretary of Commerce, "Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People's Republic of China; A-570-924; Rebuttal to the Petitioners' Comments on Surrogate Country Selection" (April 29, 2011).

²² See Memorandum to Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, from Jonathan Hill, International Trade Compliance Analyst, "Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Selection of a Surrogate Country," dated October 27, 2011 ("Surrogate Country Memo") at 7-8.

²³ See Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process, (March 1, 2004) ("Policy Bulletin 04.1") available at <http://ia.ita.doc.gov>.

surrogate overhead ratio.²⁴ Further, the Department finds that treating the entire sum as raw materials (i.e., placing the entire sum in the denominator of the overhead ratio) would be highly distortive to the overhead ratio.²⁵ Therefore, based on record evidence, the Department has preliminarily determined to select India as the surrogate country on the basis that: (1) it is at a comparable level of economic development to the PRC, pursuant to 773(c)(4) of the Act; (2) it is a significant producer of comparable merchandise; and (3) we have reliable data from India that we can use to value the FOP.²⁶ Accordingly, we have calculated NV using Indian prices, when available and appropriate, to value the FOPs of the mandatory respondents.²⁷ In accordance with 19 CFR 351.301(c)(3)(ii), interested parties may submit publicly-available information to value FOP until 20 days after the date of publication of the preliminary results.²⁸

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate.²⁹ It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate

²⁴ See Surrogate Country Memo at 9-11.

²⁵ See Surrogate Country Memo at 10.

²⁶ See Surrogate Country Memo at 8-11.

²⁷ See Surrogate Value Memorandum at 2.

²⁸ In accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative SV information pursuant to 19 CFR 351.301(c)(1). See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part, 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

²⁹ See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, available at <http://ia.ita.doc.gov/policy/bull05-1.pdf>.

this independence through the absence of both de jure and de facto governmental control over export activities. The Department analyzes each entity exporting the subject merchandise under a test set out in the Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991) ("Sparklers"), as further developed in Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) ("Silicon Carbide").

However, if the Department determines that a company is wholly foreign-owned or located in a market economy ("ME"), then a separate rate analysis is not necessary to determine whether it is independent from government control.³⁰ Fuwei Films is wholly foreign-owned.³¹ Therefore, for the purposes of these preliminary results, the Department finds that it is not necessary to perform a separate-rate analysis with respect to Fuwei Films.

Dongfang, Green Packing, and Wanhua reported that they are either wholly Chinese-owned companies, or joint ventures between Chinese and foreign companies.³² Therefore, the Department must analyze whether these respondents can demonstrate the absence of both de jure and de facto governmental control over export activities.

1. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses, (2) any legislative

³⁰ See Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China, 64 FR 71104, 71104-05 (December 20, 1999) (where the respondent was wholly foreign-owned and, thus, qualified for a separate rate).

³¹ See Fuwei Film's February 28, 2011 Separate Rate Certification response at page 2.

³² See Dongfang's March 8, 2011 response to Section A of the Department's Antidumping Duty questionnaire at question 2(a)(i); see also Wanhua's March 8, 2011 response to Section A of the Department's Antidumping Duty questionnaire at question 2(a)(i); see also Green Packing's February 28, 2011 Separate Rate Certification at page 2.

enactments decentralizing control of companies, and (3) other formal measures by the government decentralizing control of companies.³³

The evidence provided by Dongfang, Green Packing, and Wanhua supports a preliminary finding of de jure absence of government control based on the following: (1) an absence of restrictive stipulations associated with its business and export licenses, (2) applicable legislative enactments decentralizing control of companies, and (3) formal measures by the government decentralizing control of companies.³⁴

2.. Absence of De Facto Control

Typically, the Department considers four factors in evaluating whether each respondent is subject to de facto government control of its export functions: (1) whether the export prices are set by or are subject to the approval of a government agency, (2) whether the respondent has authority to negotiate and sign contracts and other agreements, (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management, and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.³⁵ The Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of governmental control, which would preclude the Department from assigning separate rates.

The evidence provided by Dongfang, Green Packing, and Wanhua supports a preliminary finding of de facto absence of government control based on the following: (1) the absence of

³³ See Sparklers, 56 FR at 20589.

³⁴ See Dongfang's March 8, 2011 Section A Questionnaire response at question 2(d) through 2(f); see also Green Packing's March 12, 2011, Separate Rate Certification response at questions 10 through 14; see also Wanhua's March 8, 2011 Section A Questionnaire response at question 2(d) through 2(f).

³⁵ See Silicon Carbide, 59 FR at 22587; see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China, 60 FR 22544, 22545 (May 8, 1995).

evidence that the export prices are set by or are subject to the approval of a government agency, (2) the respondents have authority to negotiate and sign contracts and other agreements, (3) the respondents have autonomy from the government in making decisions regarding the selection of management, and (4) the respondents retain the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.³⁶

Calculation of Separate Rate

The statute and our regulations do not address directly how we should establish a rate to apply to imports from companies which we did not select for individual examination in accordance with section 777A(c)(2) of the Act in an administrative review. Generally, we have used section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, as guidance when we establish the rate for respondents not examined individually in an administrative review.³⁷ Section 735(c)(5)(A) of the Act provides that “the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated,”

Because using the weighted-average margin based on the calculated net U.S. sales quantities for Wanhua and Dongfang would allow these two respondents to deduce each other’s business-proprietary information and thus cause an unwarranted release of such information, we cannot assign to the separate rate companies the weighted-average margin based on the calculated net U.S. sales values from these two respondents.

³⁶ See Dongfang’s March 8, 2011, Section A Questionnaire response at questions 2(a)(iii)-(v); 2(b)-(c); 2(g)-(q); see also Green Packing’s February 28, 2011 Separate Rate Certification response at questions 15 through 20; see also Wanhua’s March 8, 2011, Section A Questionnaire response at questions 2(a)(iii)-(v); 2(b)-(c); 2(g)-(q).

³⁷ See Notice of Final Results and Partial Rescission Antidumping Duty Administrative Review: Certain Frozen Warmwater Shrimp from the People’s Republic of China, 75 FR 49460 (August 13, 2010); Certain Pasta from Italy: Notice of Final Results of the Twelfth Administrative Review, 75 FR 6352 (February 9, 2010), and the accompanying I&D Memo at Comment 2.

For these preliminary results, we determine that using the ranged total sales quantities reported by Wanhua and Dongfang from the public versions of their submissions, is more appropriate than applying a simple average.³⁸ These publicly available figures provide the basis on which we can calculate a margin which is the best proxy for the weighted-average margin based on the calculated net U.S. sales values of Wanhua and Dongfang. We find that this approach is more consistent with the intent of section 735(c)(5)(A) of the Act and our use of section 735(c)(5)(A) of the Act as guidance when we establish the rate for respondents not examined individually in an administrative review.

Because the calculated net U.S. sales values for Wanhua and Dongfang are business-proprietary figures, we find that 46.66 percent, which we calculated using the publicly available figures of U.S. sales quantities for these two firms, is the best reasonable proxy for the weighted-average margin based on the calculated U.S. sales quantities of Wanhua and Dongfang.³⁹

The PRC-Wide Entity

In addition to the separate-rate applications discussed above, there are two companies, Xishu and Uchem, for which we initiated a review in this proceeding and which did not previously have a separate rate. In accordance with the Department's established NME methodology, a party's separate rate status must be established in each segment of the proceeding in which the party is involved.⁴⁰ Because these companies did not file a Separate Rate Application to demonstrate eligibility for a separate rate in this administrative review, or

³⁸ See Wanhua Supplemental Section A questionnaire response (Public Version) dated April 11, 2011, at Exhibit SA-1; see also Dongfang Section A questionnaire response (Public Version) dated March 8, 2011, at Exhibit A-1.

³⁹ See "Memorandum to the File from Jonathan Hill, International Trade Compliance Analyst, Office 4 Re: Calculation of Separate Rate," dated concurrently with this notice.

⁴⁰ See *Sigma Corp. v. United States*, 117 F.3d 1401, 1405-06 (Fed. Cir. 1997) (affirming the Department's presumption of State control over exporters in non-market economy cases).

certify that they had no shipments,⁴¹ we preliminarily determine that these companies are part of the PRC-wide entity.

Use of Facts Available and Adverse Facts Available

Section 776(a) of the Act provides that the Department shall apply “facts otherwise available” (“FA”) if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Wanhua

In its June 13, 2011, supplemental Section D questionnaire, the Department requested that Wanhua disclose its methodology for reporting its FOPs on a product and product thickness specific basis (i.e., control number (“CONNUM”) specific or product name (“PRODCODU”) specific).⁴² On June 27, 2011, Wanhua stated that it “calculated its per unit figure of FOPs by the consumption allocation, based on the actual consumption of FOPs, actual production quantity and technical requirements of each product with specific thickness.”⁴³ During verification, Wanhua provided the Department with a worksheet with specific information regarding its methodology for the purpose of demonstrating how it had calculated the direct material FOP consumption rates reported in its FOP database; however, Wanhua was not able to reproduce the exact direct material consumption rates as reported in its FOP database. Thus, pursuant to

⁴¹ See Initiation Notice, 75 FR at 81566.

⁴² See Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to Wanhua, “Third Section D Supplemental Questionnaire” (June 13, 2011) at 1.

⁴³ See Wanhua’s supplemental Section D response dated June 27, 2011, at 2.

section 776(a)(2)(D) of the Act, Wanhua provided information to the Department that could not be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying FA when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Based on findings at verification, we are applying partial AFA to Wanhua's direct material consumption rates because the Department finds that the information necessary to calculate an accurate and otherwise reliable margin is not available on the record. Specifically, the Department could not verify the exact PET chip consumption rate specific to each CONNUM that Wanhua reported.⁴⁴ At verification, Wanhua attempted to substantiate its reported direct material FOP allocations for each product produced during the POR using PET chip proportions (*i.e.*, the percentage of the finished PET film), which were machine settings that the company adjusted yearly based upon its production experience.⁴⁵ Wanhua provided a worksheet intended to represent its methodology for deriving material input calculations as reported in its questionnaire response. However, using this worksheet, we were unable to substantiate Wanhua's reported figures because the figures in the worksheet resulted in calculated consumption rates that were discrepant with those in its questionnaire responses. The Department had previously requested Wanhua to fully disclose its methodology in its June 27, 2011, supplemental questionnaire response. However, Wanhua only stated in its response to the Department that the methodology involved the "technical requirements of each product with

⁴⁴ See Wanhua's March 28, 2011, response at Exhibit D-7.

⁴⁵ See Wanhua Report at 13.

specific thickness,” which it chose not to disclose. By failing to disclose the PET chip proportions required to perform this methodology in its June 27, 2011, supplemental questionnaire response, Wanhua deprived both the Department, and itself, of the opportunity to correct and support the results of the methodology at verification. Consequently, in accordance with section 776(b) of the Act, we find that an adverse inference is warranted because Wanhua did not act to the best of its ability to provide the Department with verifiable data within its exclusive control. Therefore, for the preliminary results, pursuant to section 776(a)(2)(D) of the Act, the Department calculated consumption rates for bright chip, additive chip, and reclaimed chip by using the highest consumption rate in Wanhua’s FOP data set submitted on June 27, 2011 “Revised FOP Computer Data Base – WANFOP003” for each of the three material inputs.. For further details regarding the Department’s methodology, see Wanhua Analysis Memorandum.⁴⁶

Fair Value Comparisons

To determine whether sales of PET film to the United States by the mandatory respondents were made at NV, we compared export price (“EP”) to NV, as described in the “Export Price” and “Normal Value” sections of this notice.

Export Price

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, we have used EP

⁴⁶ See Memorandum from Jonathan Hill, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, “Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Preliminary Analysis Memorandum for Tianjin Wanhua Co., Ltd.” (October 27, 2011) (“Wanhua Analysis Memorandum”).

for the U.S. sales of the mandatory respondents because the subject merchandise was sold directly to the unaffiliated customers in the United States prior to importation and because constructed export price was not otherwise warranted.

We have based the EP on delivered prices to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we have made deductions from the starting price for movement expenses, including expenses for foreign inland freight from the plant to the port of exportation, domestic inland insurance, domestic brokerage and handling, international freight, and marine insurance. Dongfang and Wanhua did not report or claim any other adjustments to EP.⁴⁷

Normal Value

Section 773(c)(1) of the Act provides that, the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME country and the Department finds that the available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. This methodology ensures that the Department's calculations are as accurate as possible.⁴⁸

⁴⁷ See Wanhua Analysis Memorandum. See also Memorandum to the File "Analysis Memorandum for the Preliminary Results of the Second Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Sichuan Dongfang Insulating Material Co., Ltd. ("Dongfang")" ("Dongfang Analysis Memorandum"), dated October 27, 2011.

⁴⁸ See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products From the People's Republic of China, 71 FR 19695, 19703 (April 17, 2006), unchanged in Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006).

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate SV to value FOPs, but when a producer sources an input from a market economy and pays for it in ME currency, the Department may value the factor using the actual price paid for the input.⁴⁹ Wanhua reported raw material purchases sourced from ME suppliers and paid for in a ME currency during the POR.⁵⁰ In accordance with our practice outlined in Antidumping Methodologies: Market Economy Inputs,⁵¹ when at least 33 percent of an input is sourced from ME suppliers and purchased in a ME currency, the Department will use actual ME purchase prices to value these inputs.⁵² Therefore, the Department has valued certain inputs using the ME purchase prices reported by Wanhua, where appropriate. Dongfang reported that it did not purchase inputs from ME suppliers for the production of the subject merchandise.⁵³

Section 773(c) of the Act provides that the Department will value the FOP in NME cases using the best available information regarding the value of such factors in a ME country or countries considered to be appropriate by the administering authority. The Act requires that when valuing the FOP, the Department utilize, to the extent possible, the prices or costs of factors of production in one or more ME countries that are: (1) at a comparable level of economic development, and (2) significant producers of comparable merchandise. See section

⁴⁹ See 19 CFR 351.408(c)(1); see also Shakeproof Assembly Components, Div. of Ill. Tool Works, Inc. v. United States, 268 F.3d 1376, 1382-1383 (Fed. Cir. 2001) (affirming the Department's use of market-based prices to value certain FOPs).

⁵⁰ See Wanhua's March 28, 2011 section D response at Exhibit D-4.

⁵¹ See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716, 61717-19 (October 19, 2006) ("Antidumping Methodologies: Market Economy Inputs").

⁵² For a detailed description of all actual values used for market-economy inputs, see Wanhua Analysis Memorandum.

⁵³ See Dongfang's March 28, 2011 section D response at 8.

773(c)(4) of the Act. As stated above, the Department has preliminarily determined to select India as the surrogate country.

We calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). The FOPs include but are not limited to: (1) hours of labor required, (2) quantities of raw materials employed, (3) amounts of energy and other utilities consumed, and (4) representative capital costs. The Department used FOPs reported by the mandatory respondents for materials, energy, labor, by-products, and packing.

Wanhua stated that it generated two by-products during the production process: reclaimed PET chip that cannot be used for manufacturing PET film, and PET film scrap.⁵⁴ Dongfang stated that it generated one by-product during the production process, reclaimed PET chip, that cannot be used for manufacturing PET film.⁵⁵ Both companies requested by-product offsets to NV for these by-products and provided record evidence establishing that these by-products generated during the course of production have commercial value.⁵⁶ The Department examined and confirmed the companies' by-product offsets at verification.⁵⁷ Therefore, for these preliminary results, we have granted both mandatory respondents a by-product offset to NV.

Factor Valuations

In accordance with section 773(c) of the Act, the Department calculated NV based on FOPs reported by the mandatory respondents for the POR. To calculate NV, the Department multiplied the reported per-unit factor consumption quantities by publicly available Indian SVs. In selecting the SVs, the Department considered the quality, specificity, and contemporaneity of

⁵⁴ See Wanhua's March 28, 2011 section D response at Exhibits D-11 and D-15.

⁵⁵ See Dongfang's March 28, 2011 section D response at Exhibits D-10 and D-13.

⁵⁶ See Wanhua's March 28, 2011 section D response at Exhibit D-12 through D-14; see also Dongfang's March 28, 2011 section D response at Exhibits D-11 and D-12.

⁵⁷ See Dongfang Report at 16. See Wanhua Report at 19.

the data. The Department adjusted input prices by including freight costs to make them delivered prices, as appropriate. Specifically, the Department added to Indian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory of production. This adjustment is in accordance with the decision of the U.S. Court of Appeals for the Federal Circuit (“CAFC”) in Sigma Corp. v. United States, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997). A detailed description of all SVs used to value the mandatory respondents’s reported FOPs may be found in the Surrogate Value Memorandum.

The Department calculated SVs for the majority of reported FOPs purchased from NME sources using the contemporaneous, weighted-average unit import value derived from the Monthly Statistics of the Foreign Trade of India, as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India in the Global Trade Atlas (“GTA”), available at <http://www.gtis.com/wta.htm> (“GTA Indian Import Statistics”).⁵⁸ GTA Indian Import Statistics were reported in India Rupees and are contemporaneous with the POR. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department’s practice is to select, to the extent practicable, SVs which are non-export average values, most contemporaneous with the POR, product-specific, and tax-exclusive.⁵⁹

In those instances where the Department could not obtain publicly available information contemporaneous with the POR with which to value FOPs, the Department adjusted the publicly

⁵⁰ See Surrogate Value Memorandum.

⁵⁹ See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam, 69 FR 42672, 42682 (July 16, 2004), unchanged in Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam, 69 FR 71005 (December 8, 2004).

available SVs using the Indian Wholesale Price Index, as published in the International Financial Statistics of the International Monetary Fund.⁶⁰

Furthermore, with regard to Indian import-based SVs, we have disregarded prices that we have reason to believe or suspect may be subsidized, such as those from Indonesia, South Korea, and Thailand. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.⁶¹ We are also guided by the statute's legislative history that explains that it is not necessary to conduct a formal investigation to ensure that such prices are not subsidized.⁶² Rather, this legislative history states that the Department should base its decision on information that is available to it at the time it is making its determination. In accordance with the foregoing, we have not used prices from these countries in calculating the Indian import-based SVs.

The Department used GTA Indian Import Statistics to calculate SVs for raw materials (i.e., PET chips), packing materials (i.e., pallets, lateral board, PE foam, paper pipe, stretch film, packing tape, plastic caps, plastic bags, top board, and metal clips), and by-products (i.e., reclaimed PET chips that cannot be used for manufacturing PET film, and PET film scrap).

Previously, the Department used regression-based wages that captured the worldwide relationship between *per capita* Gross National Income ("GNI") and hourly manufacturing

⁶⁰ See Surrogate Value Memorandum.

⁶¹ See Final Results Of Redetermination Pursuant To Court Remand, dated February 25, 2010, Jinan Yipin Corp., Ltd. v. United States, 637 F. Supp. 2d 1183 (CIT 2009). See also Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review, 70 FR 54007, 54011 (September 13, 2005), unchanged in Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the First Administrative Review, 71 FR 14170 (March 21, 2006); and China Nat'l Mach. Import & Export Corp. v. United States, 293 F. Supp. 2d 1334 (CIT 2003), affirmed 104 Fed. Appx. 183 (Fed. Cir. 2004).

⁶² See Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) at 590, reprinted in 1988 U.S.C.A.N. 1547, 1623-24.

wages, pursuant to 19 CFR 351.408(c)(3), to value the respondent's cost of labor. However, on May 14, 2010, the CAFC, in Dorbest Ltd. v. United States, 604 F.3d 1363, 1372 (Fed. Cir. 2010) ("Dorbest"), invalidated 19 CFR 351.408(c)(3). As a consequence of the CAFC's ruling in Dorbest, the Department no longer relies on the regression-based wage rate methodology described in its regulations. On February 18, 2011, the Department published in the Federal Register a request for public comment on the interim methodology, and the data sources. See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor; Request for Comment, 76 FR 9544 (Feb. 18, 2011).

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings. See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092 (June 21, 2011) ("Labor Methodologies"). In Labor Methodologies, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics ("Yearbook").

In these preliminary results, the Department calculated the labor input using the wage method described in Labor Methodologies. To value the respondent's labor input, the Department relied on data reported by India to the ILO in Chapter 6A of the Yearbook. The Department further finds the two-digit description under ISIC-Revision 3 - D ("25 Manufacture of Rubber and Plastics Products") to be the best available information on the record because it is specific to the industry being examined, and is therefore derived from industries that produce comparable merchandise. Accordingly, relying on Chapter 6A of the Yearbook, the Department

calculated the labor input using labor data reported by India to the ILO under Sub-Classification 11 of the ISIC-Revision 3 - D standard, in accordance with Section 773(c)(4) of the Act. For these preliminary results, the calculated industry-specific wage rate is Rs.45.70. A more detailed description of the wage rate calculation methodology is provided in the Surrogate Value Memorandum.

We valued electricity using the Schedule of Electricity Tariffs, as published by the Maharashtra Energy Regulatory Commission, in its publication dated June 2009.⁶³ These electricity rates represent actual publicly-available information on tax-exclusive electricity rates. The Department used the rates for low tension industrial electricity supply for a load between 20 and 100 kilowatts. We did not inflate this value because utility rates represent current rates.

We valued truck freight expenses using an Indian per-unit average rate calculated from data on the following Web site: <http://www.infobanc.com/logistics/logtruck.htm>.⁶⁴ The logistics section of this Web site contains inland freight truck rates between many large Indian cities. We did not inflate this rate since it is contemporaneous with the POR.

We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in India. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in India that is published in Doing Business 2010: India, published by the World Bank.⁶⁵

⁶³ See Surrogate Value Memorandum at 4.

⁶⁴ See *id.* at 9.

⁶⁵ See *id.* at 8.

We valued marine insurance using a price quote retrieved from RJG Consultants, online at <http://www.rjgconsultants.com/163.html>, an ME provider of marine insurance.⁶⁶ We did not inflate this rate since it is contemporaneous with the POR

According to 19 CFR 351.408(c)(4), the Department is directed to value overhead, general, and administrative expenses (“SG&A”), and profit using non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country. As stated above in the Surrogate Country section of this notice, in this administrative review, Petitioners submitted to the record the financial statements of Polyplex (Thailand) and Polyplex Corporation Ltd. (“Polyplex (India)”) and Wanhua submitted the financial statement of JBF Industries Limited (“JBF”). As stated above, we have determined not to rely on the financial statement of Polyplex (Thailand), because it does not contain sufficient information for calculating factory overhead. Regarding the contemporaneous 2009-2010 financial statements of Polyplex (India) and JBF, both show evidence of participation in the Duty Entitlement Passbook scheme, which the Department has found by to be a countervailable subsidy. See Carbazole Violet Pigment 23 From India: Final Results of Countervailing Duty Administrative Review, 75 FR 33243 (June 11, 2010) and the accompanying Issues and Decision Memorandum at II.A.2. Polyplex (India) is an Indian producer of PET film, while JBF produced PET yarn, which the Department has determined to be comparable to PET film. Since there are currently no other financial statements on the record of this administrative review that the Department can use to calculate the surrogate financial ratios, we have determined that the 2009-2010 financial statement of Polyplex (India) is the best available information for calculating surrogate financial ratios, because it is the only usable financial statement on the record from a producer of

⁶⁶ See id. at 8.

merchandise identical to the subject merchandise. See section 773(c)(1) of the Act (“ . . . the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country. . .”). Therefore, based on the above data considerations, we consider India to have the most appropriate surrogate financial ratio data for use in this proceeding.⁶⁷

For a complete listing of all the inputs and a detailed discussion about our SV selections, see the Surrogate Value Memorandum.

Currency Conversion

Where necessary, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect as certified by the Federal Reserve Bank on the date of the U.S. sale.

Weighted-Average Dumping Margin

The preliminary weighted-average dumping margin is as follows:

PET Film from the PRC	
Exporter	Weighted-Average Margin (percentage)
Tianjin Wanhua Co., Ltd.	46.79%
Sichuan Dongfang Insulating Material Co., Ltd.	41.82%
Fuwei Films (Shandong) Co., Ltd.	46.66 %
Shaoxing Xiangyu Green Packing Co., Ltd.	46.66 %
PRC-wide Entity ⁶⁸	76.72 %

⁶⁷ See Surrogate Value Memorandum at 7 and Exhibit 7.

⁶⁸ Xishu and Uchem are part of the PRC-wide entity.

Disclosure and Public Comment

The Department intends to disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of these preliminary results.⁶⁹ If a hearing is requested, the Department will announce the hearing schedule at a later date. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of the preliminary results of review.⁷⁰ Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after the time limit for filing the case briefs.⁷¹ The Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in all comments, and at a hearing, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review and 19 CFR 351.212(b). For assessment purposes, we calculated importer- or customer-specific assessment rates for merchandise subject to this review. We calculated an ad valorem rate for each importer or customer by dividing the total dumping margins for reviewed sales to that party by the total entered value associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting ad valorem rate against the

⁶⁹ See 19 CFR 351.310(c).

⁷⁰ See 19 CFR 351.309(c); Parties submitting written comments must submit them pursuant to the Department's e-filing regulations. See <https://iaaccess.trade.gov/help/IA%20ACCESS%20User%20Guide.pdf>.

⁷¹ See 19 CFR 351.309(d).

entered customs values for the subject merchandise. Where appropriate, we calculated a per-unit rate for each importer or customer by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. Where an importer- or customer-specific assessment rate is de minimis (i.e., less than 0.50 percent) in accordance with the requirement of 19 CFR 351.106(c)(2), the Department will instruct CBP to assess that importer's or customer's entries of subject merchandise without regard to antidumping duties. We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the PRC-wide rate we determine in the final results of this review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

_____The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) for Wanhua, Dongfang, Fuwei and Green Packing, which have separate rates, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or de minimis, zero cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the exporter-specific rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-

wide rate of 76.72 percent;⁷² and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Paul Piquado
Assistant Secretary
for Import Administration

October 27, 2011 _____
(Date)

[FR Doc. 2011-28571 Filed 11/02/2011 at 8:45 am; Publication Date: 11/03/2011]

⁷² See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 55039, 55041 (September 24, 2008).